



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0079]

Hours of Service of Drivers: PJ Helicopters, Inc.; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny PJ Helicopters, Inc.'s (PJH) request for an exemption from the Federal hours-of-service (HOS) rules for its ground support equipment operators. The requested exemption would have allowed PJH's ground support equipment operators a 16-hour window within which to complete all driving, and enable these operators to use an 8-consecutive hour off-duty break, combined with at least two other off-duty hours during the 16-hour window within which driving would be completed, in lieu of taking 10 consecutive hours off duty. FMCSA analyzed the exemption application and public comments and determined that the applicant would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-2722. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, FMCSA-2019-0079, in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the Federal Register (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the Federal Register (49 CFR 381.315(b)) with the reasons for denying or granting the application, and if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

PJH's exemption application states that the company has been serving the utility helicopter industry as an emergency response company for more than 45 years. Most of its customers are firefighting agencies, law enforcement agencies, and public utilities. PJH's customers require timely responses and long hours when dealing with emergency-related incidents. PJH's helicopters must be fueled and serviced in a timely fashion by its ground support crews. PJH requested an exemption from 49 CFR 395.3(a)(1) and (2) for its ground support equipment operators.

The requested exemption would apply to approximately 32 ground support equipment operators, each of whom possesses a commercial driver's license with applicable endorsements, including the tank vehicle endorsement. PJH states that it is an emergency response company contracted to agencies focused on public safety and that there currently are no exemption provisions in the 49 CFR part 395 for private companies that assist in emergency efforts. PJH's Federal and State government contracts specify that ground support equipment operators must be available for a maximum of 14 hours. At the end of the day, when the helicopter has finished flying, a mechanic must inspect and repair the aircraft as needed. With a long flight day and these added duties, a PJH mechanic will exceed the "14-hour rule" when traveling between the helicopter landing zone and the mechanic's lodging. Without the requested 16-hour exemption, PJH's ground crew must be released earlier to reach their lodging before reaching the 14-hour "driving window" limit, which decreases the availability of the aircraft by a minimum of 14 total hours each week.

The second component of PJH's exemption request is intended to work in conjunction with the first. It would allow "ground crew members" to take only 8, instead

of 10, consecutive hours off duty before coming on duty again, provided they take at least 2 hours off duty during the prior 16-hour driving window PJH requested and are responding to or returning from an active incident as requested by an officer of a public agency or public utility.

PJH estimates that its drivers would need to use this exemption, on average, once every two weeks during the months of April through October.

The PJH application for exemption is filed in the docket for this notice.

IV. Public Comments

On March 29, 2019, FMCSA published notice of this application and requested public comments (84 FR 12018). The Agency received three comments. The Commercial Vehicle Safety Alliance (CVSA) opposed this exemption, stating that the request is both unjustified and impractical. CVSA argued that the Federal HOS requirements exist to help prevent and manage driver fatigue and set forth a framework that, if followed, allows for drivers to get the rest necessary to operate their vehicles safely. CVSA argued that the Federal HOS requirements, if followed, allow drivers to get the rest necessary to operate their vehicles safely. Per CVSA, exemptions from Federal safety regulations have the potential to undermine safety while complicating the enforcement process. If granted, this exemption would place an excessive burden on the enforcement community and negatively impact safety.

CVSA concluded its comment with an emphasis on PJH's failure to meet a key component of a credible exemption request, i.e., to identify adequately how its drivers would maintain an equivalent level of safety while operating under extended HOS requirements. Two other comments were filed by individuals – one favored the request, the other took no position either for or against the request.

V. Equivalent Level of Safety

To ensure an equivalent level of safety PJH is offering the use of electronic logging devices, at least 2 hours off-duty during the requested 16-hour period, and infrequent use of the exemption if granted. According to PJH drivers would need to use the exemption on average once every 2 weeks during the months of April through October.

VI. FMCSA Response

When the Agency established the rules mandating HOS, it relied upon research indicating that the rules improve CMV safety. These regulations put limits in place for when and how long an individual may drive to ensure that drivers stay awake and alert while driving and on a continuing basis to help reduce the possibility of driver fatigue. The PJH application does not provide an analysis of the safety impacts the requested exemption from the HOS regulations may cause. Additionally, it provides no countermeasures that PJH would undertake to ensure that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations.

Although the applicant is offering at least 2 hours off duty during the requested 16 hour on duty period, the applicant offered no data or information that would suggest that allowing a 16-hour window for multiple consecutive days with only 8 hours off duty would achieve an equivalent level of safety.

VII. FMCSA Decision

FMCSA has reviewed PJH's application and the public comments and has concluded that the requisite level of safety cannot be ensured, for the reasons discussed above.

Accordingly, FMCSA denies the request for exemption.

Issued on: November 15, 2019

Jim Mullen
Deputy Administrator

[FR Doc. 2019-25336 Filed: 11/20/2019 8:45 am; Publication Date: 11/21/2019]